

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
Harrisburg Drifton

JOHN RICHARD JAE,
Plaintiff,

vs

DR. ROBERT CLARK,
MARTIN L. DRAGOVICH,
JOHN A. PALAKOVICH,
ROBERT N. NOVOTNEY,
MICHAEL S. KAZOR, and
JOHN ANDRADE,
Defendants.

Civil No. 1:00-cv-001

United States District Judge
Magistrate Judge

FILED
HARRISBURG, PA

AUG 24 2000

MARY E. D'AMBREA, CLERK
Per [Signature]
Deputy Clerk

MOTION FOR A TEMPORARY RESTRAINING ORDER
AND/ OR AN EXPEDITED PRELIMINARY INJUNCTION

Plaintiff and Pro Se Counsel John Richard Jae, in the above-entitled Civil Rights Action, pursuant to Fed. R. Rule 65 (a) & (b) moves this Court to grant him a temporary restraining order and/or an expedited preliminary injunction.

1. Prohibits Defendants Dragovich, Palakovich, Novotney, their agents, employees, successors in interest, and all others acting in active concert and/or participation with them from placing and confining this Plaintiff in any Federal Spectral Management Unit ("SMU").

2. Requires Defendants Dragovich, Palakovich, Novotney, and Kazor to immediately release this Plaintiff from the Federal Penitentiary Harrisburg Unit ("FPHU") and

\$leave him in a Special Needs Unit of a State Hospital where he can get treatment for his serious mental health illness disease and his criminal sex offense.

(W) HEREBY, this court should grant this motion in all respects, herein this case.

RESPECTFULLY SUBMITT

(S) ~~John Richard Jae~~
MR. JOHN RICHARD JAE
Plaintiff and Pro Se Counsel

MR. John Richard Jae
#BQ-3219

SCI-Camp Hill

P.O. Box 200

Camp Hill, PA. 17001-0200

Dated: 13th AUGUST 2000:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

JOHN RICHARD JAE

Plaintiff

vs.

DR. ROBERT CLARK,
MARTIN L. DRAGOVICH,
JOHN A. PALAKOVICH,
ROBERT N. NOOTNEY,
MICHAEL J. KAZOR and
JOHN ANDRADE

Defendants.

Civil No. 1:00-00-100

U.S. District Judge R.
Magistrate Judge Smye

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING

Upon the initial and amended complaints, the Affidavits of Plaintiff John Richard Jae and the Memoranda of Defense submitted herewith, IT IS

ORDERED, ADJUDGED & DECREED, that Defendants Dragovich, Palakovich, Nootney and Kazor shall show cause why a Temporary Restraining Order should not be issued at Room _____, _____th Floor, United States Courthouse, Walnut Street, Harrisburg, PA. 17108, on the _____/2000, at _____ o'clock, why a

Injunction should not issue pursuant to Fed. R. Civ. P. (a), which enjoins Defendants Dragovich, Palakovich, Nootney and Kazor, their employees, successors and assigns

from placing and confining this Plaintiff in any Prison Special Management Unit ("SMU"), and 2) Require Defendants Dragovich, Falakovich, Nektrey & Kazar to immediately release this Plaintiff from the Prison Restricted Housing Unit ("RHU") and place & leave him in a Special Needs Unit of a State Hospital where he can get treatment for his serious Mental Health Illness Disease and his criminal sex offense.

IT IS FURTHER ORDERED, ADJUDGED & DECREED effective immediately, and pending the hearing determination of the order to Show Cause, Dragovich, Falakovich, Nektrey and Kazar, and agents, employees, successors in interest and persons acting in active concert and/or participation with them are restraining from keeping the Plaintiff in the Prison's Restricted Housing Unit ("RHU") and directed to immediately release the Plaintiff from the Restricted Housing Unit ("RHU") and place and leave him in a Special Needs Unit of a State Hospital where he can get treatment for his serious Mental Health Illness Disease and his criminal sex offense and restrained from placing and confining the Plaintiff in any Prison Special Management Unit ("SMU").

IT IS FURTHER ORDERED, A JUDGED & DECREED
that this order to show cause and all other papers
attached hereto, shall be served upon Defendants
Dragovich, Palakovich, ~~Nik~~ Stneyn and Kaza and upon
Plaintiff JAE herein by _____
that the United States Marshals for this Court shall
make such service.

BY THE COURT =

s/ _____

Dated: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
Harrisburg Division

JOHN RICHARD JAE,
Plaintiff,

vs.

DR. ROBERT CLARK,
MARTIN L. DRAGOVICH,
JOHN A. PALAKOVICH,
ROBERT N. NOWITNEY,
MICHAEL J. KAZOR, and
JOHN ANDRADE,
Defendants.

Civil No. 1:00-CV-001

U.S. District Judge
Magistrate Judges

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR AN EXPEDITED PRELIMINARY INJUNCTION

JOHN RICHARD JAE, declares under penalty of perjury

1. I am the Plaintiff in this case. I make this Affidavit of my Motion for Temporary Restraining Order And/or An Preliminary Injunction prohibiting Defendants from placing me in any Prison Special Management Unit (ISMU) and Order Defendants to immediately release me from the PHUDC-S to place & leave me in a Special Needs Unit where I can treatment for my serious mental health illness disease and for sex offense.

2. As set forth in the Complaint and in the Amended Complaint in this case on: April 24, 2000, per the Orders of

Placed in steel handcuffs, a black box and a steel waist chain with a padlock in my cell in the RHV at SGE-Camp and such was done without Defendant DR. Clark, Chief Psychiatrist, personally first examining, seeing and talking me to verify & determine that it was absolutely necessary to do such to me here.

3. That, Defendant DR. Clark, Chief Psychiatrist, left in such steel handcuffs, Black Box and steel waist chain with a padlock, without even seeing, talking to nor evaluating me at all for four (4) days, from April 24, - 27, 2000, at which date ordered the above removed from me.

4. That, the initial & continued placement of myself in such a Black Box, and a steel waist chain with a padlock here April 24, - 27, 2000, was done for punitive purposes to punish me for my behavior and such was not the least reasonable measure which could have been used here and such amount to in humane treatment.

5. That, as a direct result of my being placed and left in such Handcuffs, a Black Box, a steel waist chain and a padlock by Defendant DR. Clark, from breakfast, on April 25, 2000, thru lunch April 27, 2000, I, Plaintiff Jee, was unable to eat normal, to stick my mouth down in my food and drink and eat/drink dog, which not only was humiliating, but was really difficult to do.

6. That, as a direct result of my being placed and left in such a Black Box, a steel waist chain and a padlock by Defendant DR. Clark from

7. That, as a direct result of my being placed & left in steel Handcuffs, a Black Box, a Steel waist chain and a Back by Defendant Dr. Robert Clark, from April 24, - 27, 2000, I had extreme difficulty urinating and did not move my body at all because I could not wipe myself and most times would be peeing all over myself when I did urinate. Not only was humiliating, but extremely uncomfortable as to remain in wet, pissy undershorts & also as a direct result of my being placed & left in steel Handcuffs, a Black Box, a waist chain and a Back by Defendant Dr. Clark, from April 27, 2000, I suffered extreme, unnecessary mental and physical pain, anguish and torture to my hands, wrists, arms & suffered permanent injury by way of scars on both my wrists from steel Handcuffs and I will be scarred/marked for life and I suffered with no feeling in my left hand, from my wrist to the base of my left thumb & such felt dead for 3 months.

8. That, despite my attempts to take my life on April 24, 2000, & despite a prior mental health illness relapse February 15, 2000, and February 16, 2000, where I was feces all over my face, hair, arms, hands, chest & legs, cell wall & told Prison Staff that I was Jesus Christ, that little green men were running around my cell & to run up my ass & where I was banging my head off the wall then too, Defendant Dr. Clark refuses to have me committed to a psychiatric facility or a mental health community & deliberately refuses to treat me for my health illness here at all.

9. That, I still hear voices in my head & still have thoughts about killing myself from time to time here since April 27, 2000, and I do believe that the next time I try to kill myself I will do so for certain as I am sick of living.

10. That, I have a long & lengthy past history of serious mental health illness disease and I had been taking different kinds of anti-psychotic medications since 1989, when I was nine (9) years old up until January 12, 1999, when I was taken off of anti-psychotic medication by Defendant Dr. Clark, here, with the exception of a period of time from April, 1986, - May, 1987, when I was not on any medication at all & I have not been on any anti-psychotic medication here since January 12, 1999, and I want to get help and treatment for my serious mental health illness disease and I have requested such from Defendant Dr. Clark and other Prison Staff here, but I have been denied such help and treatment by Defendant Dr. Clark and Prison Staff here.

11. That, on November 19, 1999, I, Plaintiff Jare was initially placed in the Restricted Housing Unit ("RHU") at SCI-Camp Hill and I have remained on Disciplinary Custody Status in there since November 22, 1999.

12. That, on or about February 17, 2000, February 24, 2000, 25, 2000, May 4, 2000, May 31, 2000, & June 5, 2000, Defendant Andrade found me guilty of various Prison misconducts which were a part and a product and a direct result of my serious mental health illness disease and he sanctioned me to Disciplinary Custody Status time in the RHU for such misconducts.

despite the fact that he was fully aware that I have & suffer from a long & lengthy significant history of serious mental health illness disease and that despite the fact that Defendants Dragovitch, Palakovich, Novak, & Kazar were fully aware that I have & suffer from a long & lengthy significant history of serious mental health illness disease also, they all let me confined in the RHU on DC-Status/Positive Segregation although they were aware, that by law they were not allowed to.

13. That, it is my mental health illness disease which caused him to act out & misbehave.

14. That, back in 1998, my Prison Counselor up at SCI-Smithfield, wrote me back on an Inmate Request form stating that I was considered to be a mental health case with mental health stability score of three (3) or above.

15. That, mental health illness disease is permanent and does not go away & once [REDACTED] I am a mental health case he is always such.

16. That, although I have been given many psychiatric diagnoses over the years, the ones that have been put forth the most certainly the most times is: Borderline Personality Disorder, organic Personality Disorder and Intermittent Explosive Disorder with poor impulse control.

17. That, on June 6, 2000, I was sent to the Special Assessment Unit (SAU) at the State Correctional Institution at Waymart ("SCI-Waymart") for a mental health evaluation and recommendation.

18. On July 18, 2000, I was returned back to the RHU at SCI-Camp Hill from SAU at SCI-Waymart and although I have not seen Waymart SAU team's report & recommendation,

on July 19, 2000, I talked to and was informed by my Prison Counselor here, Mr. Lee Kerstetter, that the Wayne SAV Team recommended in the report on me that I be placed in the Special Management Unit ("SMU").

19. Additionally, and although I did not state such in my initial nor amended complaints herein this case, but in 1966, my father knocked me down a flight of stairs a drunken rage & I struck/hit the back of my head. I was knocked unconscious for between 5-10 minutes. As a direct result thereof, I suffered severe and graphic trauma and have MBD (minimal brain damage) and in 1992 or 1993 I was informed by a Consulting Psychiatrist at the University of Pittsburgh's Western Psychiatric Institute and Clinic, Dr. Scott Burnstein, (a psychoneurologist, who had his practice on treating individuals with psychiatric disorders from neurological damage), who was one of treating residents at the State Correctional Institution at Pittsburgh's Special Needs Unit, that my acting out physical behavior and sexual misconduct behavior are a part and a direct result of such head injury back in 1966, and that it was for such head injury and the resulting neurological brain damage resulting therefrom, that I would not have control with my physical acting out nor my sexual acting out behavior and that there is a chemical/neurological imbalance in my brain as a result of such 1966 head injury which is what causes me to do so. Also, it is strange to

only psychiatrists who say I don't have mental illness and that I am just a behavior problem, and not a psychiatrist, as such is what prison officials

who have examined me outside of and before I came to Prison, (one of whom was still seeing me in Prison back in 1994 & 1995, at SCI-Pittsburgh), who are the specialized Psychiatrists (i.e., Forensic Psychiatrist neuro psychiatrist) (one of such is also the Director of Allegheny County Forensic Behavior Clinic and the main Psychiatrist for the Allegheny County Court of Common Pleas, Division, Dr. Christine Martone), all state I do have suffer from serious mental health illness disease. I do have neurological damage to my brain and that my physical acting out behavior is a part and a product and a result of my serious mental health illness disease and it is such specialized psychiatrists who are the real qualifications, not the just mere plain psychiatrists that they hire, such as Defendant Dr. Clark, who must of got his Psychiatrist Degree at of a "Cracker Jack Box."

20. I am suffering in repairable injury/harm in the fact being denied any treatment at all for my serious mental illness disease, despite two (2) separate/recent court attempts, and in being confined in the Prison's RHU, or punitive segregation, despite my long & lengthy significant history of ^{serious} mental health illness disease, and under sub human conditions, such, where my RHU Prison has broken/inadequate plumbing, which causes the toilet water to come out into the cell on the 6th floor, which causes a constant foul odor in my cell and causes numerous little flies to fly throughout my cell and land on me and time have even flown up in my mouth and I've got physically sick from such, where there is inadequate hot water, inadequate ventilation/excessive heat, where broken showers, cock roaches, mice and other

where I now only get clean linen for my bed, a OK
 RHU jump suit to wear, [which is usually too small for me]
 and a clean towel, once every two weeks (sometimes
 longer of a period goes by before I get clean ones), and
 there is excessive noise from certain other inmates
 where other inmates and prison officers deliberately
 tease, taunt & torment me because of my mental
 illness disease and my criminal sex offense.
 Where prison officers mess with my food, where
 prison officers have threatened me with physical
 harm/injury and have actually twice now come into
 my cell and physically assaulted me and where I am
 in daily fear of being physically assaulted, and where
 my Constitutional rights of access to my legal mail,
 access to the courts, to send/receive mail, to read
 to outside exercise and to be free from subjection
 and unusual punishment are violated on a repeated
 continued basis and give all I have been through
 this year alone, it is a miracle of God that I have
 not killed myself yet, but I do not know how much
 I can go on if I am left confined here in the
 DC-status, and have to continue to go through the mental
 and torture and denial of my Constitutional rights
 I've gone through already and surely will have to go through
 in the future if the requested injunctive relief herein is
 not granted and I am left in the RHU or DC-status/punitive status
 here and/or placed in any special mental management
 and I have to wait for myself to escape
 thus, I am suffering irreparable harm/injury
 21. For the foregoing reasons, herein, as well

accompanying memorandum of law filed along with this motion, this Plaintiff is entitled to a temporary restraining order and/or an expedited preliminary injunction prohibiting Defendants Dragovitch, Falakavitch, Al-Kor and Kazar from placing this Plaintiff in any Special Management Unit (SMU) and ordering said Defendants immediately release this Plaintiff from the RHU/DC State Prison and leave him in a Special Needs Unit or a State Hospital where he can get treatment for his Senile Health Illness Disease & his Criminal Sex Off

(W) HEREOF, this Court should grant Plaintiff's motion here in all respects =

"Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true & correct."

Signed on this 13th day of August, 2000
Camp Hill, Pennsylvania.

RESPECTFULLY SUBMIT

(s) John Richard J.
MR. JOHN RICHARD J.
Plaintiff and his Sec

MR. John Richard J.
#BQ-3219
SCI-Camp Hill
P.O. Box 200
Camp Hill, PA. 1700

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION
JOHN RICHARD JAE CIVIL No. 1:00-CV-01090

Plaintiff,

VS.

U.S. District Judge R.
Magistrate Judge Smye

DR. ROBERT CLARK,
MARTIN L. DRAGONICH,
JOHN A. PALAKOVICH,
ROBERT N. NOVOTNEY,
MICHAEL J. KAZOR, and
JOHN ANDRADE,

Defendants.

MEMORANDA OF LAW IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR AN EXPEDITED PRELIMINARY INJUNCTION

COMES NOW, the Plaintiff & Prisoner caused to be
entitled Civil Action, John Richard Jae, as a Layman Unlearned
in the Arts & Sciences of the Laws & Legal Procedures within the
United States, & who, now files his Memoranda of Law in Support
of Motion for Temporary Restraining Order And/or An Expedited
Preliminary Injunction, & who, avers, deposes & swears,

I. STATEMENT OF THE CASE AND FACTS

THIS IS a 42 U.S.C. § 1983 Civil Rights action
brought by a state prisoner who was illegally arrested &
detained in a state prison for a period of 18 months.

In steel handcuffs, a black box & a steel chain & a padlock by orders of the Chief Prison Psychiatrist Defendant Dr. Robert Clark, and which as a direct result thereof, the Plaintiff was forced to eat like a dog, pissed all over himself when he urinated, could not move his bowels as he could not wipe himself, was unable to sleep and suffered excruciating pain and mental torture and he is scarred/maimed for life with marks/indentations on both his wrists from the steel handcuffs for four days and for such wanton & deliberate indifference to plaintiff's serious mental health needs.

An Amended Complaint filed by the Plaintiff on August 3, 2000, added L. Dragovich, John A. Palakovich, Robert N. Nibbel, Michael J. Kaza, and John Andrade, as new party Defendants.

Defendant Andrade is sued for finding this Plaintiff guilty of numerous Prison Misconducts which were a part and product and a direct result of Plaintiff's serious mental health illness disease and for sanctioning Plaintiff to DC-Status time such, thus showing a deliberate indifference to Plaintiff's serious mental health illness disease and his rights to freedom of movement.

Defendants Dragovich Palakovich, Nibbel, Kaza, and Andrade are all sued for upholding Defendant Andrade's verdicts which are based on a normal

Dragovich, Blakerich, Novotney & Kazar are all accused for their illegal refusal to release the Plaintiff from RHU/DC status, despite their all being fully aware of Plaintiff's history of serious mental health illness disease and the law that they may not confine an inmate who has such a history of serious mental health illness disease in the Prison's RHU on Disciplinary Custody ("DC") status / punitive Segregation and that they were therefore also deliberately indifferent to Plaintiff's serious mental health illness disease here. Defendants Dragovich, Blakerich, Novotney & Kazar are also sued because they are considering placing this Plaintiff, who has a significant and lengthy history of serious mental health illness disease, in a Special Management Unit ("SMU") in violation of Federal law.

The Plaintiff seeks a temporary Restraining Order and/or an expedited preliminary injunction prohibiting Defendants Dragovich, Blakerich, Novotney & Kazar from placing this Plaintiff in any Special Management Unit ("SMU") and ordering said Defendants to immediately release this Plaintiff from the RHU/DC status here and to place & keep him in a Special Needs Unit or a State Hospital where he can get treatment for his serious mental health illness disease and

III ARGUMENT POINT I

THE PLAINTIFF IS ENTITLED TO A TEMPORARY
RESTRAINING ORDER AND/OR AN EXPEDITED
PRELIMINARY INJUNCTION

In determining whether a party is entitled to a temporary restraining order or a preliminary injunction, courts generally consider several factors: Whether the party will suffer irreparable injury, the "balance of hardships" between the parties, the likelihood of success on the merits, and the public interest. If these factors favor the grant of this motion, see Murphy v. Society of Real Estate Appraisers, 388 F. Supp. 1049 (E.D. WIS. 1975).

I. The Plaintiff Is Threatened With Irreparable Harm
The Plaintiff alleges that he has been found guilty of prison misconducts which were a product and a direct result of his serious mental health illness disease and sanctioned DC-status/Punitive Segregation time for such and that supervisory prison officials (defendants) upheld such on appeals to them and refused to order this Plaintiff released from the RHU/DC-status here and placed in a state hospital or the Prison's Special Needs Unit where he can receive treatment for his serious mental health illness disease and for his criminal offense. Such conduct by prison officials is a clear violation of the Eighth Amendment of the United States Constitution.

Indifference to plaintiff's serious mental health care needs and a denial of adequate care for which violates the Eighth Amendment. See: Smith v. Jenkins, 919 F.2d 90, 92-93 (8th Cir. 1990); Langley v. Caughlin, 888 F.2d 252, 254 (2d Cir. 1989) and Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979). Also, it violates the Eighth Amendment for an inmate to be found guilty of prison misconducts which occurred as a direct result of his serious mental health illness disease. See Arnold on behalf of H.B. v. Lewis, 803 F. Supp. 256 (D. Ark. 1992); Cameron v. Times, 151 F.3d 1524-25 (D. Mass. 1992). Also, it violates the Eighth Amendment to house a mentally disturbed inmate in punitive segregation unit. Inmates of Occoquan v. Barry, 717 F. Supp. 868 (D.D.C. 1989); Langley v. Caughlin, 751 F.2d 522, 543-44 (S.D.N.Y. 1989); Langley v. Caughlin, 709 F. Supp. 482, 484-85 (S.D.N.Y. 1988); Finney v. Mabry, 534 F. Supp. 1126/1127 (E.D. Ark. 1982); Morales Felton v. Hernandez Colon, 697 F. Supp. 48 (D. P.R. 1988); Inmates of Allegheny County Jail v. Pierce, 487 F. Supp. 638, 644 (W.D. Pa. 1980) and Tillery v. Owens, 1719 F. Supp. 1256, 1257 (W.D. Pa. 1989), aff'd, 907 F.2d 418 (3d Cir. 1990), for placing mentally ill inmates in punitive segregation.

Casey v. Lewis, 834 F.Supp. 1477/1548-49 (D.A.R. 1994)
and Arnold on behalf H.B. v. Lewis, 803 F.Supp. at 256

As a matter of law, the continuing deprivation of constitutional rights constitutes irreparable harm. See Ellen Burns, 427 U.S. 273, 96 S. Ct. 2673 (1975); Deerfield Medical Center v. City of Deerfield Beach, 661 F.2d 338 (6th Cir. 1981). This principle has been applied in prison litigation generally, see Newsome v. Norris, 888 F.2d 371, 378 (6th Cir. 1989); Mitchell v. Cuomo, 748 F.2d 804, 806 (2d Cir. 1984); Albee v. Cantor, 744 F.2d 1280, 1287 (N.D.N.Y. 1986); Williams v. Lane, 646 F.Supp. 1409 (N.D.I. 1986), aff'd, 851 F.2d 867 (7th Cir. 1988), cert. granted, 109 S.Ct. 879 (1989).

In addition, the plaintiff is threatened with irreparable harm in the future if he is in fact placed in a Special Management Unit ("SMU") as he has a long & lengthy history of serious mental health illness disease and because of the onerous closed confinement conditions of such units, they are particularly unsuitable to house inmates with histories of serious mental health illness disease as the conditions of such unit exacerbate said inmates' mental

symptoms and thus the federal courts have condemned the housing of inmates with histories of serious mental health illness disease in such units.

II. The Balance of Hardships Favors The Plaintiff

In deciding whether to grant TROs and Preliminary Injunctions, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if the motion is granted.

See e.g., Mitchell v. Cuomo, 748 F.2d 808 (2d Cir. 1984); Duran v. Araya, 642 F. Supp. 810, 827 (D. N.M. 1986). In this instant case the present suffering of the plaintiff under the subhuman conditions of the RHU here, which exacerbate plaintiff's serious mental health illness disease condition and the potential irreparable harm this plaintiff will suffer in the future if left in the RHU and if placed in a Special Management Unit ("SMU") in the future will be enormous. The "suffering" the Defendants experience if this court grants the TRO and/or PI will consist of releasing this Plaintiff from the RHU/PC status and prohibiting from placing this plaintiff in any other Special Management Unit ("SMU") something Defendants are legally obligated to do and to not do under the

For a description of such subhuman conditions see Plaintiff's Affidavit In Support of Motion For Temporary Restraining Order And/or An Expedited Preliminary Injunction at 20 exhibited herewith.

cont'd from federal law on the

Since the Defendants have no legal authority to leave/continue to confine this Plaintiff, who has a long and lengthy significant history of serious mental health illness, in the prison's restricted housing unit (RHU) or DC-Status/Punitive Segregation and/or to continue to place him in any Prison Special Management Unit (SMU) in the future and since Defendants can always easily place this Plaintiff back in the RHU or SMU later on down the road if the Plaintiff loses this suit on its merits the end, and since the Defendants will not have to expend any money to comply with the TRO and/or PI if granted, the Superior of the moving party (the Plaintiff) if the motion is denied far outweighs the Superior of the non-moving party (the Defendants) if the motion is granted.

IV. The Plaintiff is likely to succeed on the Merits. The Plaintiff has a great likelihood of success on the merits. What the Defendants have done -- finding this Plaintiff guilty of prison misconducts which were a part and a product and a direct result of his serious mental health illness disease, sanctioning him to DC-Status/Punitive

segregation in the RHU here and upholding affirming such on appeal(s) and continuing to leave this Plaintiff in DC-Status/punitive segregation in the RHU here when he suffers from a long and significant history of serious mental health illness -- has long been condemned and held to violate the Eighth Amendment of the United States Constitution by the Federal Courts. See: Arnold on behalf of ^{#BX} ~~others~~, 8 F. Supp. 246, 256 (D. Ariz. 1992) (placement "lockdown" as punishment for the symptoms of [the plaintiff's] mental illness and as an alternative to providing mental health care [violates the Eighth Amendment]). See also Cameron Jones, 783 F. Supp. 1511, 1524-25 (D. Mass. Tillery v. Owens, 719 F. Supp. 1256, 1303-04 (W.D. Pa. 1989) (Constitution requires separate units for ~~severely~~ mentally ill, i.e., those who will not take their medications regularly, maintain hygienic practices, accept dietary restrictions or report symptoms of illness), 2/aff'd, 907 F.2d 444 (Cir. 1990); Inmates of Occoquan v. Barry, 717 Supp. 854, 868 (D. D.C. 1989) (inmates with mental health problems

2/Herein, this plaintiff, when he was on medication would not take such regularly, he was so lax in maintaining normal hygienic practices, that he had to be placed in a medical observation unit where the staff officers

at 1303, Langley v. Coughlin, 709 F. Supp. 985, and Langley v. Coughlin, 715 F. Supp. 454.

Furthermore, confining this Plaintiff, a long & lengthy significant history of mental illness disease, in the Prison on DC-Status/Punitive Segregation and him in any Special Management Unit/Room in the future has already and would violate United Nations Minimum Rules for the Treatment of Prisoners, of which the United States is a signatory to. In the United Nations Standard Minimum Rules for the Treatment of Prisoners, B. Insane And Mentally Abnormal PRISONERS, No. 82. (2) - states:

"PRISONERS who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management."

Given the above & foregoing facts & arguments herein, particularly the ones above and at p p 6-7 & 9-10, and the fact that federal courts have ordered that inmates with histories of serious mental health illness disease are not to be confined in a Prison Special Management

likelihood of winning a favorable final judgment on his behalf at trial on the issue of Defendant's proposed placement of him in a prison Special Management Unit (SMU) when he has a long & lengthy significant history of serious mental health illness disease is also great, here in this case, and Plaintiff's likelihood of success on the merits of his claims against Defendant DR. Clark, herein, is also great.

IV. The Relief Sought Will Serve The Public Interest

In this case, the grant of the relief sought will serve public interest because it is always in the public interest for persons to obey the law. See: Duran v. Anaya, 645 F.Supp. 510 (D.N.M. 1986) ("Respect for the law, particularly by officials responsible for administration of the State Correctional System, is in itself a matter of the highest public interest") & also Llewellyn v. Oakland County Prosecutor's Office, 402 F.Supp. 1371, 1303 (E.D. Mich. 1975) ("The Constitution is the ultimate expression of public interest") & Washington v. Reno, 35 F.3d 1131 (6th Cir. 1994) & Pratt v. Chicago Housing Authority, 848 F.Supp. 794, 796 (N.D. Ill. 1994) & ILQ Investments, Inc. v. City of Rochester, 816 F.Supp. 916 (D.Minn. 1993) ("upholding constitutional guaranteed rights is in the public interest").

POINT VI

THE PLAINTIFF SHOULD NOT BE REQUIRED TO POST SECURITY

Usually a litigant who obtains interim injunctive relief is asked to post security, Rule 65(c), Fed. Cir. R. However, here in this case, this Plaintiff is an indigent person's combat and security wherein the Court

discretion to excuse an impoverished Plaintiff post security. See: Orantes-Hernandez v. Smith, 511 F. Supp. 305 n. 30 (C.D. Cal. 1982); ITL v. Parham, 412 F. Supp. (D. Ga. 1976), Rev'd on other grounds, 442 U.S. 584, 99 S. 2493 (1979). See also, Buelton Off. Home Owners v. Department of Housing and Urban Development, 284 F. Supp. 809, 840 (E.D. Pa. 1968).

Even if this Court finds that this Plaintiff is not entitled to a temporary restraining order, it should grant Plaintiff an expedited preliminary injunction after notice to the Defendant.

A preliminary injunction after notice to the Defendant may be based on consideration of the same four factors as is discussed in Part I, supra. See: Florida Medical Association Inc. v. United States Department of Health, Education and Welfare, 601 F.2d 199 (5th Cir. 1978).

(w) HERETOFORE, for the foregoing reasons the Court should grant the Plaintiff in all respects and do so without requiring the Plaintiff to post security in this case.

RESPECTFULLY SUBMITTED

(S) John Richard Jae
MR. JOHN RICHARD JAE,
Plaintiff and PR Se Cases
MR. John Richard Jae,

Dated: 13th AUGUST 2000: #BQ-3219

SCI-Camp Hill

P.O. Box 200

Camp Hill, PA 17011

PROOF OF SERVICE

I certify that on 8-18-00 (date) I mailed a copy of this ~~Memoranda~~

and Memoranda of Law via first class mail to the following persons at the addresses listed below:

DR. Robert Clark,
Chief Psychiatrist
Wexford Health Sources
SCI-Camp Hill Health Care Unit
2500 Lisbon Road
Camp Hill, PA. 17001

Ms. Sarah Vandenbrack,
Chief Counsel
Office of the Chief Counsel
The Pennsylvania Department of Corrections
5501 Ivy Drive
Camp Hill, PA. 17011

PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 8/18/00 (date) for forwarding to this court. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.

(S)

Signature

John Richard Jae
MR. JOHN RICHARD JAE,
Plaintiff and Pro Se Counsel

Mr. John Richard Jae,
#BA-3219

SCI-Camp Hill
P.O. Box 200

Camp Hill, PA 17001-0200

Executed Date:
18th AUGUST 2000

At ~~Camp Hill~~ Pennsylvania: